FILED JANUARY 11, 2010

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of	)	Case Nos.: **06-O-14161-PEM** (07-O-10113-PEM)
NATHAN PACO,	)	
Member No. 151490,	)	**DECISION & ORDER OF INACTIVE ENROLLMENT**
A Member of the State Bar.	)	

I. INTRODUCTION

In this original disciplinary proceeding, which proceeded by default, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) charges respondent **NATHAN PACO**[1] with a total of twenty-five counts of professional misconduct in five separate client matters. For the reasons set forth *post*, the court finds respondent culpable on only 17 of the 25 counts. Nonetheless, the court concludes that the appropriate level of discipline for the found misconduct is disbarment.

The State Bar was represented by Deputy Trial Counsel Erica Dennings. Respondent initially appeared in this proceeding in persona propria. But, as discussed *post*, his default was entered when he failed to appear on the third day of trial.

[1] Respondent was admitted to the practice of law in the State of California on June 30, 1997, and has been a member of the State Bar of California since that time.

II. KEY PROCEDURAL HISTORY

On December 29, 2008, the State Bar filed the notice of disciplinary charges (NDC) in this proceeding and properly served a copy of the NDC on respondent. Respondent filed his response to the NDC on February 9, 2009.

The trial in this proceeding began on July 28, 2009. During the lunch break on the second day of trial (i.e., July 29, 2009), respondent called 911 and was taken to the hospital. Accordingly, the court continued the trial to August 12, 2009, so that respondent could continue to participate. On August 11, 2009, respondent notified the court that he would not appear for trial on August 12 because of medical reasons and submitted a note from a medical assistant in his doctor's office in support of his medical reasons.[2] Respondent failed to appear for trial on August 12, 2009. And, in an order filed and served on respondent that same day, the court continued the trial to August 19, 2009, and ordered that respondent's default would be entered if he failed to appear for trial on August 19, 2009, and failed to submit, to the court, a detailed declaration from a doctor (not a medical assistant) setting forth respondent's medical disability.

Respondent failed to appear for trial on August 19, 2009. Moreover, respondent failed to submit a doctor's declaration to the court. Accordingly, the court entered respondent's default and, as mandated by Business and Professions Code section 6007, subdivision (e)(1),[3] ordered that respondent be involuntarily enrolled as an inactive member of the State Bar of California effective August 24, 2009.

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[2] In his August 11, 2009 notice to the court, respondent did not make the requisite showing of good cause requiring a continuance. (State Bar Ct. Rules of Prac., rule 1131(c).)

[3] Unless otherwise indicated, all further statutory references are to the Business and Professions Code.

On October 13, 2009, and after obtaining two extensions of time, the State Bar filed its brief on culpability and discipline. Also, on that day, the court took the case under submission for decision.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Under section 6088 and rules 200(d)(1)(A) and 201(c) of the Rules of Procedure of the State Bar, upon the entry of default, the factual allegations (but not the charges or conclusions) that are set forth in the NDC are deemed admitted and no further proof is required to establish the truth of those facts. Nonetheless, this court must still resolve all reasonable doubts in respondent's favor. (*Young v. State Bar* (1990) 50 Cal.3d 1204, 1216; *In re Aquino* (1989) 49 Cal.3d 1122, 1130.)

Attached to the State Bar's October 13, 2009, brief on culpability and discipline are exhibits C through G, I, J, 62, and 62A. The State Bar proffers and the court admits into evidence those exhibits together with previously marked trial exhibits 1 through 14 and 16 through 59. (Rules Proc. of State Bar, rule 202.) Of course, to the extent that any of these exhibits contains evidence that negates a deemed allegation in the NDC, it is the evidence and not the allegation that controls the court's findings of fact. (*In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301, 318, citing *Remainders, Inc. v. Bartlett* (1963) 215 Cal.App.2d 295.) As set forth *post*, the deemed allegations in the NDC and the State Bar's exhibits establish and fail to establish the following charged disciplinary violations.

A. The Mott Client Matter

Daroleen Paco, respondent's wife, worked in respondent's law office as a legal assistant and the office manager.

In July 2004, William and Tamberly Mott (collectively Motts) retained respondent (1) to prepare and file, for them, a voluntary petition for bankruptcy under chapter 7 of the Bankruptcy

Code (individual and corporate liquidation) and (2) to thereafter represent them in bankruptcy court. On about July 8, 2004, the Motts met with respondent and disclosed to him that William Mott (William) was unemployed; that Tamberly Mott (Tamberly) was a student with no income; and that they owned a house in Arizona, which they were trying to sell. Respondent incorrectly told the Motts that their Arizona property would not be an issue in their bankruptcy since the property was not in California. In addition, respondent advised the Motts to immediately stop paying their creditors without informing them that ceasing those payments before their bankruptcy petition was filed could subject them to liability with their creditors. Based on respondent's oral advice, the Motts immediately ceased making payments to their creditors.

About that same time, the Motts paid respondent $50 towards respondent's fee of $725. Respondent did not tell the Motts that his $725 fee did not include representation in "contested matters," which occur if there are challenges to the petition in bankruptcy court. Upon receipt of the $50 payment, respondent told the Motts to return to his office when they had the remainder of his fee, and he would file the chapter 7 petition at that time.

On about August 24, 2004, William became employed. Soon thereafter, the Motts notified respondent of William's employment and salary. Based on William's employment, the Motts inquired whether they should file petition under chapter 13 of the Bankruptcy Code (individual reorganization) instead of a chapter 7 petition. In response, respondent advised them to file a chapter 7 petition.

In about late November 2004, the Motts sold their house in Arizona. Soon thereafter, they notified respondent of the sale.

On about December 1, 2004, the Motts paid respondent an additional $884 towards his fee and costs. In total, the Motts paid respondent's $725 fee and advanced to respondent $209 for costs. On about the same date, the Motts were provided a questionnaire to fill out and return

to respondent. Thereafter, the Motts completed the questionnaire and returned it to respondent on about December 20, 2004.

From about December 21, 2004, through about May 2005, the Motts repeatedly attempted to contact respondent by telephone numerous times to request a status update on their bankruptcy case. During that time, the Motts either left messages with respondent's wife or daughter or left voicemail messages for respondent requesting that respondent contact them. Respondent received those messages, but failed to respond to them.

In about March 2005, William received a raise. Shortly thereafter, William telephoned respondent's office and left a voicemail message notifying respondent of the raise. Respondent received that message, but did not personally respond to it. Instead, respondent's wife called the Motts and told them that changes in William's salary would not need to be noted in the chapter 7 petition since respondent would use the income figures from July 2004.

In about March and April 2005, based on William's increase in salary, the Motts left messages with respondent's office questioning whether they should file a chapter 13 petition and requesting respondent to contact them to discuss the matter. Respondent received these messages, but did not respond to them. Instead, respondent's wife called the Motts and advised that they should proceed with a chapter 7 bankruptcy.

In about late April 2005, the Motts went to respondent's office to review and sign the chapter 7 bankruptcy petition, schedules, and statement of financial affairs, which respondent had prepared. Respondent was not in the office. Thus, respondent's wife met with the Motts. During that meeting, the Motts told respondent's wife that the schedules contained an error regarding the value of an automobile lease, and respondent's wife corrected the error.

In addition, the Motts told respondent's wife that the medical expenses of $3,000 per month listed in the schedules was too high since most of those expenses were now paid by the

health insurance that William obtained through his employer. Respondent's wife did not make any changes to the medical expenses; instead, she told the Motts that the amount listed was accurate since it was based on their medical costs in July 2004. Before they left respondent's office that day, the Motts signed the petition, schedules, and statement of financial affairs, but were not provided copies of the signed documents. Respondent's wife promised the Motts that respondent would review the petition with them before filing, but respondent never did so.

On about May 2, 2005, respondent filed the Motts' chapter 7 petition in the United States Bankruptcy Court for the Northern District of California. In that petition, the Motts' medical costs were overstated. Moreover, in that petition, respondent intentionally failed to disclose the sale of the Motts' Arizona property and intentionally understated William's present income. On about the same date, respondent filed a disclosure of compensation of attorney for debtor in the Motts' bankruptcy case. In that disclosure form, respondent incorrectly stated that the Motts paid him an advance fee of $675 (as noted *ante*, the Motts paid respondent an advance fee of $725). In addition, respondent incorrectly stated: "By agreement with the debtors, the above disclosed fee does not include . . . any contested matters." Respondent did not have such an agreement with the Motts.

After respondent filed the Motts' petition, the bankruptcy court appointed J. Elder to serve as the chapter 7 trustee in the Motts' case. On about June 27, 2005, respondent and the Motts attended the first meeting of creditors (341 hearing) in the Motts' case. At the 341 hearing, respondent told Trustee Elder that the Motts' income had not changed from that listed on the schedules, even though respondent knew that the Motts' income had increased since the filing of the schedules on May 2, 2005. Finally, at the 341 hearing, Trustee Elder requested receipts from the Motts to support their claim of $3,000 per month in medical costs.

Immediately after the 341 hearing, the Motts again asked respondent whether they should convert the case to a chapter 13 proceeding. And respondent again reassured the Motts that their case should remain a chapter 7 proceeding. Later, the Motts provided respondent with the receipts for their medical expenses. The receipts, which totaled about $8,000, established that the schedules respondent prepared and filed for the Motts overstated their medical costs by about $10,000. Respondent, however, failed to take any action to correct the schedules.

On July 18, 2005, the United States Bankruptcy Trustee filed an ex parte motion for a rule 2004 examination of the debtors (i.e., the Motts). A copy of the motion was served on respondent. Even though he received the copy of the motion, respondent failed to respond to it. And, on about July 22, 2005, the bankruptcy court issued an order granting a rule 2004 examination of the debtors.

When they received a copy of that order from the bankruptcy court, the Motts immediately contacted respondent. Respondent told the Motts that they did not need legal counsel for the rule 2004 examination. He also told the Motts that he would charge them an additional fee of $900 to represent them at the rule 2004 examination. In response, the Motts told respondent that they did not want to pay additional fees.

At this point, the NDC alleges: "Respondent then counseled the Motts to lie to the U.S. Trustee at the 2004 Examination. Specifically, respondent advised the Motts not to disclose their actual income or disclose their ownership and subsequent sale of the Arizona property, claiming that they were not required to disclose such information to the U.S. Trustee." Even though those allegations are deemed admitted by the entry of respondent's default, they are negated and superseded by Tamberly's and William's declaration testimony. (*In the Matter of Heiner*, *supra*, 1 Cal. State Bar Ct. Rptr. at p. 318; cf. Rules Prof. Conduct, rule 5-110.) In their respective declarations (which are exhibits "C" and "D" to the State Bar's October 13, 2009, brief on

culpability and discipline), Tamberly and William each clearly state that respondent told them that they should attend the rule 2004 examination with their documentation "and *just tell the truth*." (Italics added.)

The Motts hired Attorney Richard La Cava to represent them at the rule 2004 examination. Thereafter, in late July 2005, on the Motts' motion, the bankruptcy court converted the Motts' chapter 7 bankruptcy proceeding to a chapter 13 bankruptcy proceeding.

In about late April 2006, the United States Bankruptcy Trustee filed a motion for review of respondent's fees in the Motts' case. In that motion, the trustee alleged that respondent improperly handled the Motts' case and sought an order requiring respondent to disgorge his fee. On about May 16, 2006, respondent filed a response to the trustee's motion. Later that same month, the bankruptcy court held a hearing on the trustee's motion, and on May 30, 2006, it filed an order requiring respondent to refund all of his $725 fee to the Motts by June 26, 2006. That May 30, 2006 order further provided that, if respondent failed to refund the $725 fee to the Motts by June 26, 2006, respondent would thereafter be prohibited from accepting a retainer from any debtor with a case in the United States Bankruptcy Court for the Northern District of California until the payment to the Motts was made. Respondent received a copy of the bankruptcy court's May 30, 2006 order, but failed to comply with it. In fact, at least as of September 9, 2009, respondent had still not refunded any portion of the $725 fee to the Motts.

Count One (A) – Failure to Perform (Rules Prof. Conduct, rule 3-110(A))[4]

In count one (A), the State Bar charges that respondent willfully violated rule 3-110(A), which provides that an attorney must not "intentionally, recklessly, or repeatedly fail to perform legal services with competence." The court finds that the record clearly establishes that

[4] Unless otherwise indicated, all further references to rules are to these Rules of Professional Conduct of the State Bar of California.

respondent willfully violated rule 3-110(A) because he repeatedly failed to perform legal services competently when he delayed filing the Motts' chapter 7 bankruptcy petition until May 2005; when he improperly advised the Motts to stop paying their bills before they filed for bankruptcy; when he incorrectly advised the Motts that their Arizona property would not be an issue in their bankruptcy because the property was not in California; when he understated the Motts' income and overstated their medical expenses in their chapter 7 petition; and when he failed to amend the schedules so that they correctly stated Motts' actual medical costs of $8,000.

Count One (B) – Aiding the Unauthorized Practice of Law (Rule 1-300(A))

In count one (B), the State Bar charges that respondent willfully violated rule 1-300(A), which provides that an attorney must "not aid any person or entity in the unauthorized practice of law." Specifically, the State Bar charges that "By allowing his wife to dispense legal advice to the Motts regarding their bankruptcy petition, respondent aided a person in the unauthorized practice of law, in wilful violation of rule 1-300(A) . . . ." However, there is little evidence that respondent's wife independently dispensed legal advice to the Motts (as opposed to her communicating respondent's legal advice to them). Furthermore, even if she did independently dispense legal advise to the Motts, there is no clear and convincing evidence that respondent knew that his wife was doing so, much less that he allowed her to do so.

The NDC alleges that "Respondent knew or should have known that his wife was dispensing legal advice to the Motts." Even though that factual allegation is deemed admitted by the entry of respondent's default, it *establishes* only the lesser of the allegations (i.e., that respondent should have known that his wife was dispensing legal advice). (Cf. *Young v. State Bar* (1990) 50 Cal.3d 1204, 1216 [court must resolve all reasonable doubts in respondent's favor]; *In re Aquino* (1989) 49 Cal.3d 1122, 1130 [when equally reasonable inferences may be drawn from the facts, court must accept the inference that leads to a conclusion of

innocence]; see also *In the Matter of Freydl* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349, 359 [taking as established only the lesser of the charges in each count].) In other words, at best, the deemed allegation establishes that respondent was negligent in not knowing that his wife was independently dispensing legal advice. Such mere negligence will not support the imposition of discipline. (Cf. *Palomo v. State Bar* (1984) 36 Cal.3d 785, 795-796; see also *In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 149.) Accordingly, count one (B) is dismissed with prejudice.

Co***unt One (C) – Advising the Violation of a Law (Rule 3-210)***

In count one (C), the State Bar charges that respondent willfully violated rule 3-210. Rule 3-210 provides "A member shall not advise the violation of any law, rule, or ruling of a tribunal unless the member believes in good faith that such law, rule, or ruling is invalid. A member may take appropriate steps in good faith to test the validity of any law, rule, or ruling of a tribunal."

Specifically, the State Bar charges that "By advising the Motts not to disclose their actual income or ownership and subsequent sale of the Arizona property to the U.S. Trustee at the Rule 2004 Examination, respondent wilfully advised the violation of a law, rule, or ruling of a tribunal without believing in good faith that the law was invalid, in wilful violation of rule 3-210 . . . ." The record fails to establish this charged violation. As found *ante*, the record does not establish that respondent advised the Motts not to disclose their income or Arizona property to the trustee at the rule 2004 examination. Instead, the record establishes that respondent advised the Motts to attend the rule 2004 examination with their documentation "and *just tell the truth*." (Italics added.) Accordingly, count one (C) is dismissed with prejudice.

Count One (D) – Misleading Judicial Officer (§ 6068, subd. (d))

In count one (D), the State Bar charges that respondent willfully violated section 6068, subdivision (d), which provides that attorneys must "employ, for the purpose of maintaining the causes confided to him or her those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law."

The record clearly establishes that respondent willfully violated section 6068, subdivision (d) when he filed the Motts' chapter 7 petition and when he filed the disclosure of compensation of attorney for debtor because he knew that both of those pleadings contained false information. However, the misconduct underlying these violations of section 6068, subdivision (d) is the same misconduct underlying the section 6106 violations charged and found under count one (E) *post*. Accordingly, count one (D) is dismissed with prejudice as duplicative of count one (E). (*In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 786-787.)

Count One (E) – Moral Turpitude (§ 6106)

In count one (E), the State Bar charges that respondent willfully violated section 6106, which proscribes acts involving moral turpitude, dishonesty, or corruption. The record clearly establishes that respondent willfully violated section 6106 when he filed the Motts' chapter 7 petition and when he filed the disclosure of compensation of attorney for debtor because he knew that both of those pleadings contained false information. The record also clearly establishes that respondent willfully violated section 6106 when he falsely stated at the 341 hearing that there was no change in the Motts' income. Respondent's failure to disclose these things involved moral turpitude and dishonesty.

Count One (F) – Failure to Communicate (§ 6068, subd. (m))

In count one (F), the State Bar charges that respondent willfully violated section 6068, subdivision (m), which provides that an attorney must "respond promptly to reasonable status

inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services." The record clearly establishes that respondent willfully violated his duty, under section 6068, subdivision (m), to respond to the reasonable status inquires of his clients when he failed to return the Motts' numerous requests for an update on the status of their bankruptcy matter from December 2004 through May 2005.

Count One (G) – Failure to Obey a Court Order (§ 6103)

In count one (G), the State Bar charges that respondent willfully violated section 6103, which provides that "A wilful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear [constitutes cause] for disbarment or suspension." The record clearly establishes that respondent willfully violated his duty, under section 6103, to obey court orders requiring him to act in the course of his profession when failed to obey the bankruptcy court's May 30, 2004 order requiring him to refund his $725 fee to the Motts.

B. The Rivera Client Matter

On about July 5, 2005, Pros Rivera (Rivera) hired respondent to represent him in a bankruptcy matter. In that regard, Rivera disclosed, to respondent, his bank accounts, annuities, retirement accounts, and real estate holdings – Rivera owned three parcels of real estate valued at more than $1.8 million. On about that same day, Jerry Diggs – who was Rivera's boss -- paid respondent $10,161 in legal fees for Rivera.

Also, on about July 5, 2005, respondent filed a voluntary petition for bankruptcy under chapter 11 of the Bankruptcy Code (corporate reorganization) for Rivera in the United States Bankruptcy Court for the Northern District of California. Individuals such as Rivera, however, may not file under chapter 11. Moreover, in the petition, respondent deliberately failed to

disclose Rivera's bank accounts, annuities, retirement accounts, and real estate holdings. What is more, in the petition, respondent incorrectly listed debts of Rivera's corporate employer as personal debts of Rivera, which could have subjected Rivera to liability for those corporate debts.

During his representation of Rivera, respondent never filed an application to obtain approval of his employment as counsel for Rivera or obtained an order approving his employment as counsel for Rivera. On about July 20, 2005, respondent filed an amended disclosure of compensation wherein he admitted to receiving $10,161 in pre-petition attorney's fees in Rivera's bankruptcy proceeding. Although respondent entitled the disclosure as "amended," he had not previously filed a disclosure in Rivera's case or otherwise notified the bankruptcy court of his receipt of the $10,161 in pre-petition fees.

In about September 2005, the bankruptcy court appointed Janina Elder as the chapter 11 trustee in Rivera's case. And, on about October 25, 2005, Trustee Elder filed a motion to convert Rivera's chapter 11 bankruptcy (corporate reorganization) to a chapter 7 bankruptcy (individual liquidation). On about November 21, 2005, the bankruptcy court granted Elder's motion and converted Rivera's bankruptcy to a chapter 7 bankruptcy.

On about December 13, 2005, respondent and Rivera attended the first meeting of creditors (341 hearing). At the beginning of the 341 hearing, respondent provided Trustee Elder a signed, but unfiled substitution of counsel, substituting Rivera into the matter in pro per. Thereafter, respondent remained at the 341 hearing and instructed Rivera not to answer certain questions. In response, Trustee Elder obtained a hearing with the bankruptcy court in relation to respondent's ability to instruct Rivera at the 341 hearing, and the bankruptcy court ordered respondent to appear at all 341 hearings, regardless of the substitution of counsel. Respondent

was present when the bankruptcy court made its order. Thereafter, all parties and counsel agreed to hold the next 341 hearing on January 4, 2006.

Respondent never filed the substitution of counsel. Moreover, respondent failed to appear at 341 hearing on the January 4, 2006. Respondent did not advise Trustee Elder that he would not appear at the 341 hearing or request a continuance of the 341 hearing. Accordingly, on about January 20, 2006, Elder filed an application for an order to show cause (OSC) regarding contempt against respondent for his failure to appear at the 341 hearing on January 4, 2006. Even though respondent received a copy of Elder's application, but failed to file a response to it. On January 27, 2006, the bankruptcy court ordered respondent to appear for an OSC hearing on February 17, 2006. Respondent received a copy of the bankruptcy court's January 27, 2006 order.

On or about February 7, 2006, based on respondent's advice that Rivera create business entities to shield his assets from creditors in his chapter 7 bankruptcy, Rivera paid respondent an additional $9,000 in attorney's fees to create those business entities. Respondent, however, never created those business entities on behalf of Rivera. Before Rivera paid respondent the additional $9,000, respondent never obtained a court order authorizing the fees and allowing payment. After receiving the $9,000, respondent did not disclose to the bankruptcy court that he received any payments for legal services in Rivera's case.

On February 17, 2006, respondent appeared at the OSC hearing. At that hearing, the bankruptcy court determined that respondent willfully disobeyed the court's order to appear at the 341 hearing on January 4, 2006.

On about April 3, 2006, the bankruptcy court issued an order finding respondent in civil contempt and ordered respondent to pay sanctions in the amount of $1,250 to Trustee Elder and $500 to the U.S. Trustee no later than thirty days from entry of the order. Respondent received a

copy of the bankruptcy court's April 3, 2006 order, but failed to comply with it. In fact, to date, respondent has failed to pay any portion of the sanctions to Trustee Elder or the U.S. Trustee.

Respondent failed to report the $1,250 sanction in writing to the State Bar within thirty days of his knowledge of the sanction.

On about April 27, 2006, Rivera hired Attorney Chris Kuhner to represent him in his bankruptcy case. On about August 10, 2006, Attorney Kuhner filed a motion seeking an order requiring respondent to disgorge all the attorney's fees he was paid in Rivera's case.

On September 11, 2006, the bankruptcy court issued an order requiring respondent to disgorge all his fees in the amount of $19,161 to Rivera. The bankruptcy court further ordered that until respondent disgorged those fees, respondent: "may not accept any retainer from any Debtor in any case filed in this Court under any Chapter, appear at any Bankruptcy Court in the Northern District, and/or file papers in any such Court without prior leave of a Judge of the Court, unless [he] is [a] respondent to an action directed at him. In any application for such leave, [respondent] shall attach a copy of this order." Respondent received a copy of the bankruptcy court's September 11, 2006 order. However, to date, respondent has failed to disgorge any of the $19,161 in attorney's fees to Rivera.

Count Two (A) – Failure to Perform (Rule 3-110(A))

In Count two (A), the State Bar charges that respondent intentionally, recklessly, and repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A) by improperly filing a chapter 11 bankruptcy petition for an individual person and by incorrectly listing, in that petition, debts of Rivera's corporate employer as personal debts of Rivera. The record, however, fails to establish such a charged violation of rule 3-110(A). In short, there is no clear and convincing evidence that respondent's conduct was intentional, reckless, or repeated. At worst, respondent's conduct was negligent. But it is clear "that negligent legal representation,

even that amounting to legal malpractice, does not establish a rule 3-110(A) violation. [Citation.]" (*In the Matter of Torres, supra*, 4 Cal. State Bar Ct. Rptr. at p. 149.) Accordingly, count two (A) is dismissed with prejudice.

Count Two (B) – Illegal Fee (Rule 4-200(A))

The record clearly establishes that respondent willfully violated rule 4-200(A) and collected illegal fees when he (1) collected the $10,161 in attorney's fees from Diggs for Rivera and failed to disclose his receipt of those fees in accordance with Federal Rules of Bankruptcy Procedure, rule 2016(b) and (2) charged and collected the $9,000 in attorney's fees from Rivera without complying with the Bankruptcy Code and Federal Rules of Bankruptcy Procedure, rule 2016(a)&(b).

Count Two (C) – Misleading Judicial Officer (§ 6068, subd. (d))

The record clearly establishes that respondent willfully violated section 6068, subdivision (d) when he intentionally failed to disclose Rivera's ownership of the three parcels of real property, his bank accounts, annuities, and retirement accounts in Rivera's chapter 11 petition. However, the misconduct underlying this violation is the same misconduct underlying the section 6106 violation that is charged and found under count two (D) *post.* Accordingly, count two (C) is dismissed with prejudice as duplicative of count two (D). (*In the Matter of Maloney and Virsik, supra*, 4 Cal. State Bar Ct. Rptr. at pp.786-787.)

Count Two (D) – Moral Turpitude (§ 6106)

The record clearly establishes that respondent willfully violated section 6106 when he intentionally failed to disclose Rivera's ownership of the three parcels of real property, his bank accounts, annuities, and retirement accounts in Rivera's chapter 11 petition. Respondent's deliberate failure to disclose those assets involved moral turpitude and dishonesty.

Count Two (E) – Failed to Support Laws (§ 6068, subd. (a))

In count two (E), the State Bar charges that respondent failed to support the law of the United States in willful violation of section 6068, subdivision (a) when he failed to obtain approval of his employment as attorney for Rivera in accordance with the Bankruptcy Code. Respondent's failure to comply with the Bankruptcy Code is the same misconduct underlying the rule 4-200(A) (illegal fee) violations that are charged and found in count two (B), *ante*. Accordingly, count two (E) is dismissed with prejudice as duplicative of count two (B).

Count Two (F) – Failed to Report Sanction (§ 6068, subd. (o)(3))

The record clearly establishes that respondent wilfully violated section 6068, subdivision (0)(3), which requires an attorney "to report to the [State Bar], in writing, within 30 days of the time the attorney has knowledge of any of the [¶] The imposition of judicial sanctions against the attorney, except for sanctions for failure to make discovery or monetary sanctions of less than one thousand dollars ($1,000)." Respondent willfully violated section 6068, subdivision (0)(3) as charged in count two (F) when he failed to report, to the State Bar in writing, the bankruptcy court's $1,250 sanction payable to Trustee Elder within 30 days.

Count Two (G) – Failed to Obey Court Order (§ 6103)

The record clearly establishes that respondent willfully violated his duty, under section 6103, to obey court orders requiring him to act in the course of his profession when failed to (1) appear at the 341 hearing on January 4, 2006, in violation of the bankruptcy court's December 13, 2005 order; (2) pay the $1,250 sanction to Trustee Elder in violation of the bankruptcy court's April 3, 2006 order; (3) pay the $500 sanction to the U.S. Trustee in violation of the bankruptcy court's April 3, 2006 order; and (4) disgorge the $19,161 in attorney's fees to Rivera in violation of the bankruptcy court's September 11, 2006 order.

C. PJ's Bankruptcy

In 2004, respondent formed a Nevada business entity in the name of PJ's, Limited-Liability Ltd. Partnership. Respondent listed himself as PJ's general partner.

On about July 26, 2005, respondent filed a voluntary petition for bankruptcy for PJ's under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of California. In that petition, respondent listed himself as both debtor and attorney for debtor. On about February 3, 2006, the United States Trustee filed a motion to convert PJ's case from a chapter 11 bankruptcy to a chapter 7 bankruptcy because respondent failed to timely file the documents required for a chapter 11 proceeding. The hearing on the matter was scheduled to take place on March 3, 2006.

On March 2, 2006, respondent for the first time filed an application to obtain approval of his employment as PJ's counsel. On March 3, 2006, at a hearing in PJ's case, which respondent attended, the bankruptcy court disqualified respondent as counsel for PJ's as a matter of law on the basis that respondent, as a principal for PJ's, could not represent the entity in its bankruptcy proceedings.

On March 10, 2006, the bankruptcy court converted PJ's bankruptcy from a chapter 11 proceeding to a chapter 7 proceeding and appointed Andrea Wirum as the chapter 7 trustee. Thereafter, respondent, as the general partner of PJ's, failed to respond to Trustee Wirum's numerous requests for materials related to PJ's bankruptcy. Accordingly, on March 16, 2006, Trustee Wirum filed an ex parte application for order requiring compliance with Bankruptcy Code sections 521(3) and 521(4).

And, on March 17, 2006, the bankruptcy court ordered respondent, as the general partner of PJ's, to comply with Bankruptcy Code sections 521(3) and 521(4) by 5:00 p.m. on March 22,

2006. Respondent received a copy of the bankruptcy court's March 17, 2006 order, but failed to comply with it.

On July 11, 2007, Trustee Wirum filed a motion for order authorizing settlement with one of PJ's creditors. On about July 31, 2007, without prior leave of court, respondent filed an objection on behalf of PJ's to that settlement. Respondent filed the objection as the "Attorney for Debtor." Then, on August 13, 2007, the bankruptcy court issued an order authorizing settlement with the creditor.

Also, on August 13, 2007, the bankruptcy court issued an OSC regarding contempt against respondent based on respondent's July 31, 2007 objection in violation of a standing court order issued in another bankruptcy case prohibiting respondent from appearing or filing papers in bankruptcy court without prior leave of court. Respondent received a copy of the August 13, 2007 OSC and appeared at a September 14, 2007 hearing on the OSC.

On October 1, 2007, the bankruptcy court issued an order finding respondent in contempt and sanctioning respondent $1,500 to be paid to the bankruptcy court no later than October 31, 2007. In lieu of the $1,500 sanctions, the bankruptcy court permitted respondent to take 10 hours of continuing legal education (CLE) courses “in addition to the 25 minimum hours” required of all California attorneys.

In its October 1, 2007 order, the bankruptcy court required respondent to file a declaration no later than October 31, 2007, stating his intention to either pay the sanction or attend the CLE courses and, if he opted to take the courses, he was to list the titles, providers and dates of the CLE courses that respondent would take. The bankruptcy court further ordered respondent to file proof of his participation in the 10 additional hours of CLE no later than April 2, 2008. Respondent received a copy of the bankruptcy court's October 1, 2007 order.

Respondent failed to notify the State Bar in writing of the $1,500 sanction within 30 days of knowledge of the sanction. Moreover, respondent failed to pay the $1,500 sanction by October 31, 2007. On about October 31, 2007, respondent filed a declaration stating that he elected to take 10 additional hours of CLE courses. In the declaration, respondent listed four CLE seminars that he had already taken in the fall 2005, which was well *before* the October 1, 2007 order. Respondent failed to take 10 additional hours of CLE.

Count Three (A) – Failed to Obey Court Order (§ 6103)

The record clearly establishes that respondent willfully violated his duty, under section 6103, to obey court orders requiring him to act in the course of his profession when he failed to (1) comply with Bankruptcy Code sections 521(3) and 521(4) by 5:00 p.m. on March 22, 2006, in violation of the bankruptcy court's March 17, 2006 order; (2) pay the $1,500 sanction in violation of the bankruptcy court's October 1, 2007 order; (3) file a declaration no later than October 31, 2007, specifying the titles, providers, and dates of the 10 additional hours of CLE courses that respondent intended to take in violation of the bankruptcy court's October 1,2007 order; (4) attend 10 additional hours of CLE course no later than April 2, 2008, in violation of the bankruptcy court's October 1, 2007 order; (5) file proof of his participation in 10 additional hours of CLE courses in violation of the bankruptcy court's October 1, 2007 order.

Count Three (B) – Failed to Report Sanction (§ 6068, subd. (o)(3))

The record clearly establishes that respondent willfully violated section 6068, subdivision (0)(3) as charged in count three (B) when he failed to report, to the State Bar in writing, the bankruptcy court’s October 1, 2007 sanction order imposing sanctions of $1,500 against respondent within 30 days.

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Count Three (C) – Failed to Comply with Laws (§ 6068, subd. (a))

The record clearly establishes that respondent willfully violated his duty, under section 6068, subdivision (a), to comply with the law of the United States and of this state when he (1) failed to file an application to obtain approval of his employment as counsel for PJ's during his representation of PJ's in bankruptcy court from July 26, 2005, to March 2, 2006, in violation of the Bankruptcy Code and (2) acted as counsel for PJ's from July 26, 2005, to March 2, 2006, without obtaining an order approving his employment as counsel in violation of the Bankruptcy Code.

D. The Aachwen Client Matter

On about October 14, 2005, Aachwen Environmental, Inc. (Aachwen) hired respondent to file a chapter 11 bankruptcy petition. On about the same date, Aachwen paid respondent $11,000 in attorney's fees. On about October 15, 2005, Aachwen filed a voluntary petition for relief under chapter 11 in the United States Bankruptcy Court for the Northern District of California. Respondent, however, failed to file the required debtor's schedules and statement of financial affairs with the petition.

On October 30, 2005, respondent filed the debtor's schedules and a statement of financial affairs for Aachwen. But the schedules were inaccurate and reflected inflated liabilities. Respondent never filed amended schedules reflecting accurate information. Also, on about October 30, 2005, respondent filed a disclosure of compensation of attorney for debtor, wherein respondent falsely stated that he received $10,000 in fees from Aachwen.

On about November 10, 2005, Aachwen paid respondent an additional $3,500 in attorney's fees to obtain a temporary restraining order (TRO) against an Aachwen creditor. Respondent, however, never obtained the TRO.

Before Aachwen paid the $11,000, respondent had not obtained a court order authorizing the fees and allowing payment. Likewise, before Aachwen paid respondent the $3,500, respondent had not obtained a court order authorizing the fees and allowing payment.

After he received the $3,500 from Aachwen, respondent did not disclose the $3,500 payment to the bankruptcy court.

On about December 6, 2005, a 341 hearing was held in Aachwen's bankruptcy. Respondent, however, failed to notify all creditors of the 341 hearing. As a result, the hearing was continued to February 7, 2006.

On about March 6, 2006, the United States Trustee filed a motion to dismiss Aachwen's bankruptcy case on the grounds that respondent failed to file an employment application. A hearing on the motion was scheduled to take place on March 31, 2006. Respondent received a copy of the March 6, 2006 motion, but failed to file a response to it.

On about March 29, 2006, the U.S. Trustee filed a motion for an order disgorging respondent's fees and prohibiting respondent from practicing law before the bankruptcy court pending disgorgement. Respondent received a copy of that March 29, 2006 motion.

On about March 31, 2006, respondent first filed an application to obtain approval of his employment as counsel for Aachwen. On March 31, 2006, a hearing was held on the issue of dismissal of Aachwen's case. On April 5, 2006, the bankruptcy court filed an order denying both the motion to dismiss and respondent's application for employment and ordering Aachwen to obtain substitute counsel by May 8, 2006. Respondent received a copy of the bankruptcy court's April 5, 2006 order.

On about April 11, 2006, respondent filed an objection to the U.S. Trustee's motion to disgorge fees. On April 14, 2006, the bankruptcy court issued an order requiring respondent to disgorge $8,961 in fees and to pay the $8,961 to the U.S. Trustee no later than April 19, 2006.

The bankruptcy court also suspended respondent from practicing law in bankruptcy court without seeking prior leave of court until the $8,961 in fees were disgorged. Respondent received a copy of the bankruptcy court's April 14, 2006 order, but failed to comply with it. To date, respondent has failed to disgorge the $8,961 in fees.

Sometime around April 2006, the U.S. Trustee discovered (1) that respondent had actually received $11,000 in fees from Aachwen, and not $10,000 as stated in respondent's disclosure filed on October 30, 2005, and (2) that respondent had received an additional $3,500 in attorney's fees from Aachwen, which respondent had never disclosed to the bankruptcy court.

On April 21, 2006, the U.S. Trustee filed a motion for an OSC why respondent should not be held in contempt of court for failure to obey the court's April 14, 2006 order. In that motion, the U.S. Trustee advised the bankruptcy court of respondent's fees of $11,000 and $3,500 and requested the court to modify the order of disgorgement to reflect $12,461. Respondent received a copy of that April 21, 2006 motion for an OSC.

On about April 27, 2006, respondent filed a response to the U.S. Trustee's April 21, 2006 motion for an OSC. Then, on July 25, 2006, the bankruptcy court issued an order requiring respondent to disgorge a total of $12,461 in fees. In the order, the court prohibited respondent from appearing or filing papers in bankruptcy court without prior leave of court until the fees were disgorged. Respondent received a copy of the court's July 25, 2006 order, but failed to comply with it. In fact, to date, respondent has failed to disgorge the $12,461 in fees.

Count Four (A) – Failure to Perform (Rule 3-110(A))

The record clearly establishes that respondent willfully violated rule 3-110(A) when he (1) failed to file the required schedules and statement of financial affairs at the same time he filed Aachwen's chapter 11 bankruptcy petition; (2) later filed inaccurate schedules; (3) failed to file amended schedules that contained the correct information; and (4) failed to seek a TRO after

collecting an additional $3,500 in fees to do so from Aachwen. Clearly, respondent's actions were repeated and reckless.

Count Four (B) – Illegal Fee (Rule 4-200(A))

The record clearly establishes that respondent willfully violated rule 4-200(A) and collected illegal fees when he (1) collected the $11,000 in attorney's fees from Aachwen without obtaining a court order authorizing fees and allowing payment in violation of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure and (2) collected the $3,500 in additional attorney's fees without obtaining a court order authorizing fees and allowing payment in violation of the Bankruptcy Code.

Count Four (C) – Misleading Judicial Officer (§ 6068, subd. (d))

The record clearly establishes that respondent willfully violated section 6068, subdivision (d) when he intentionally stated that he had received only $10,000 in attorney's fees from Aachwen in his October 30, 2005 declaration when respondent had actually received $11,000 in attorney's fees. However, the misconduct underlying this violation is the same misconduct underlying the section 6106 violation that is charged and found under count four (D) *post.* Accordingly, count four (C) is dismissed with prejudice as duplicative of count four (D). (*In the Matter of Maloney and Virsik, supra,* 4 Cal. State Bar Ct. Rptr. at pp.786-787.)

Count Four (D) – Moral Turpitude (§ 6106)

The record clearly establishes that respondent willfully violated section 6106 when he intentionally and falsely stated in his October 30, 2005 declaration that he received only $10,000 in attorney's fees when respondent actually received $11,000 in attorney's fees. Respondent's deliberately false statement under penalty of perjury involved moral turpitude and dishonesty.

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Count Four (E) – Failed to Obey Court Order (§ 6103)

The record clearly establishes that respondent willfully violated his duty, under section 6103, to obey court orders requiring him to act in the course of his profession when he failed to (1) disgorge the $8,961, in violation of the bankruptcy court's April 14, 2006 order; and (2) failed to disgorge the $12,461, in violation of the bankruptcy court's July 25, 2006 order.

Count Four (F) – Failed to Support Laws (§ 6068, subd. (a))

In count four (F), the State Bar charges that respondent failed to support the laws of the United States in willful violation of section 6068, subdivision (a) when he failed to obtain approval of his employment as attorney for Aachwen in accordance with the Bankruptcy Code. These failures to comply with the Bankruptcy Code are the same failures underlying the rule 4-200(A) (illegal fee) violations that are charged and found in count four (B), *ante*. Accordingly, count four (F) is dismissed with prejudice as duplicative of count four (B).

E. The Anselmo Client Matter

In about April 2001, respondent filed a complaint on behalf of plaintiffs Z. Anselmo and C. D'Andria against California Financial Group and Scott Ivie (collectively defendants) in the San Mateo County Superior Court. The complaint alleged fraud and sought monetary damages.

In about August 2002, defendants moved for summary judgment on the grounds that Anselmo and D'Andria were unable to prove the elements of the fraud claim. On September 23, 2002, the superior court issued an order granting defendants' motion for summary judgment and entered judgment in favor of the defendants.

On October 31, 2002, respondent filed a motion to set aside the judgment and for leave to amend the complaint to include a cause of action for breach of fiduciary duty. A hearing on respondent's motion was scheduled for December 3, 2002. However, on about November 22,

2002, respondent filed a notice of appeal with respect to the superior court's September 23, 2002 order granting the defendants' motion for summary judgment.

On December 23, 2002, the Court of Appeal issued an opinion in which it found that respondent's appeal was frivolous and violated certain rules of the California Rules of Court. The Court of Appeal dismissed the appeal and imposed $5,050 in sanctions on respondent.

Count Five – Maintaining Unjust Action (§ 6068, subd. (c))

In count five, the State Bar charges that respondent willfully violated section 6068, subdivision (c), which requires that an attorney counsel or maintain those actions, proceedings, or defenses only as to appear to him or her legal or just. The record clearly establishes that respondent willfully violated section 6068, subdivision (c) by filing a frivolous appeal of the superior court's order granting summary judgment.

F. State Bar Investigations

On March 27, 2007, State Bar investigator Amanda M. Gormley sent respondent a letter regarding the allegations in the Mott client matter, the Rivera client matter, the PJ's bankruptcy, and the Aachwen client matter. In this letter, investigator Gormley requested that respondent provide a written explanation regarding the allegations in those four matters by April 13, 2007. Respondent received that letter, but did not respond to it in writing.

Also, on March 27, 2007, investigator Gormley sent respondent a letter regarding the allegations in the Anselmo client matter. In her March 27, 2007 letter, Gormley requested that respondent provide a written explanation regarding the allegations in the Anselmo client matter no later than April 13, 2007. Respondent received that letter, but did not respond to it in writing.

On April 10, 2007, investigator Gormley again sent respondent a letter regarding the allegations in the Mott client matter, the Rivera client matter, the PJ's bankruptcy, and the Aachwen client matter. In her April 10, 2007 letter, Gormley again requested that respondent

provide a written explanation regarding the allegations in those four matters. Gormley asked that respondent respond in writing no later than April 23, 2007. Respondent received that April 10, 2007 letter, but did not respond to it in writing.

On about May 3, 2007, Gormley sent respondent another letter regarding the allegations in the Mott client matter, the Rivera client matter, the PJ's bankruptcy, the Aachwen client matter, and the Anselmo client matter. In her May 3, 2007 letter, Gormley requested that respondent provide a written explanation regarding the allegations in those five matters no later than May 14, 2007. Respondent received that May 3, 2007 letter, but did not respond to it in writing. In sum, respondent failed to provide a written response regarding the allegations those five mattes.

Count Six -- Failure to Cooperate with State Bar (§ 6068, subd. (i))

In count six, the State Bar charges that respondent willfully violated section 6068, subdivision (i), which requires that an attorney "cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against himself or herself. . . ." The record clearly establishes that respondent willfully violated section 6068, subdivision (i) by deliberately failing to respond to Gormley's multiple letters regarding the allegations in the Mott client matter, the Rivera client matter, the PJ's bankruptcy, the Aachwen client matter, and the Anselmo client matter. Such deliberate repeated failures to cooperate are *serious* misconduct.

IV. MITIGATING/AGGRAVATING CIRCUMSTANCES

A. Mitigation

There are no mitigating circumstances.

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B. Aggravation

Respondent has one prior record of discipline. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(i).)[5] In June 2002, respondent was publicly reproved for charging and collecting an unconscionable fee.

Respondent's misconduct in this proceeding involves multiple acts of misconduct. (Std. 1.2(b)(ii).)

Respondent failed to appear for the third day of trial, which allowed his defaults to be entered. (Std. 1.2(b)(vi).)

Respondent's misconduct has caused significant client harm. (Std. 1.2(b)(iv).) For example, respondent caused the Motts significant harm because he never refunded the $725 in attorney's fees as ordered by the bankruptcy court in 2006. Moreover, respondent caused Rivera significant harm because respondent never refunded the $19,161 in fees as ordered in 2006. Respondent caused significant harm to Aachwen because he never refunded the $12,461 in fees as ordered in 2006. Respondent's failures to refund these unearned fees for such an extended period of time is particularly aggravating. (*In the Matter of Nees* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459, 465 [an attorney's wrongful retention of an unearned fee for an extended period of time is itself a particularly aggravating circumstance because it approaches a practical appropriation of the client's property].)

V. DISCUSSION ON DISCIPLINE

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Ba*r (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Second, the court looks to decisional law for

[5]All further references to standards are to this source.

guidance. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylo*r (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

Standard 1.6(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions. In the present proceeding, the most severe sanction for respondent 's misconduct is found in standard 2.3, which applies to respondent's multiple deliberate concealments/misrepresentations to the bankruptcy court in willful violation of section 6106. Standard 2.3 provides:

> Culpability of a member of an act of moral turpitude, fraud, or intentional dishonesty toward a court, client or another person or of concealment of a material fact to a court, client or another person shall result in actual suspension or disbarment depending upon the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the member's acts within the practice of law.

The generalized language of standard 2.3 provides little guidance to the court. (*In re Brown* (1995) 12 Cal.4th 205, 220; *In re Morse* (1995) 11 Cal.4th 184, 206.) Nonetheless, in light of the repeated and extensive nature of respondent's concealments/misrepresentations, the court views standard 2.3 as calling for very significant discipline, if not disbarment.

The court views *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63 as instructive on the appropriate level of discipline. Even though the misconduct in *Hunter* was greater than that in the present case, much of the misconduct is similar. There the attorney, like respondent here, repeatedly violated court orders. "The wilful violation of court orders alone is egregious misconduct. 'Other than outright deceit, it is difficult to imagine conduct in the course of legal representation more unbefitting an attorney.' [Citation.]" (*Id*. at p. 79.) Moreover, respondent's misconduct evidences a distain and contempt for the orderly process and rule of law. He clearly places himself above the bankruptcy court's orders barring his practice

before it until he refunded the fees as ordered. These factors when coupled with the lack of any mitigation and substantial aggravation, demonstrate that the risk of future misconduct is great and indicate that respondent is not a good candidate for suspension or probation.

In conclusion, the court finds that disbarment is the appropriate discipline recommendation in this proceeding. Moreover, the court independently concludes that respondent should be ordered to pay the $3,250 in sanctions the bankruptcy court imposed on him (*In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, 869) and to make restitution to the Motts, Rivera, and Aachwen for the fees the bankruptcy court ordered respondent to refund.

VI. DISCIPLINE RECOMMENDATION

The court recommends that respondent **NATHAN PACO** be DISBARRED from the practice of law in the State of California and that his name be stricken from the Roll of Attorneys of all persons admitted to practice in this state.

The court further recommends that Nathan Paco be ordered to pay Trustee Janina Elder the $1,250 in sanctions as ordered by the United States Bankruptcy Court for the Northern District of California on April 3, 2006, in case number 05-32090-TEC plus 10 percent interest per year from May 3, 2006.

The court further recommends that Nathan Paco be ordered to pay the United States Bankruptcy Trustee for the Northern District of California the $500 in sanctions as ordered by the United States Bankruptcy Court for the Northern District of California on April 3, 2006, in case number 05-32090-TEC plus 10 percent interest per year from May 3, 2006.

The court further recommends that Nathan Paco be ordered to pay the United States Bankruptcy Court for the Northern District of California the $1,500 in sanctions as ordered by

that court on October 1, 2007, in case number 05-32368-DM-11 plus 10 percent interest per year from October 31, 2007.

The court further recommends that Nathan Paco be ordered to make restitution to William and Tamberly Mott in the amount of $725 plus 10 percent interest per year from June 29, 2006 (or reimburse the Client Security Fund, to the extent of any payment from the fund to William and Tamberly Mott, in accordance with Business and Professions Code section 6140.5).

The court further recommends that Nathan Paco be ordered to make restitution to Pros Rivera in the amount of $19,161 plus 10 percent interest per year from October 11, 2006 (or reimburse the Client Security Fund, to the extent of any payment from the fund to Pros Rivera, in accordance with Business and Professions Code section 6140.5).

The court further recommends that Nathan Paco be ordered to make restitution to Aachwen Environmental, Inc. (or to its successor in interest) in the amount of $12,461 plus 10 percent interest per year from August 24, 2006 (or reimburse the Client Security Fund, to the extent of any payment from the fund to Aachwen Environmental, Inc. (or to its successor in interest), in accordance with Business and Professions Code section 6140.5).

The court further recommends that any restitution to the Client Security Fund be enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

VII. RULE 9.20 AND COSTS

The court further recommends that Nathan Paco be ordered to comply with California Rules of Court, rule 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.

Finally, the court recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that the costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

VIII. ORDER OF INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Nathan Paco be involuntary enrolled as an inactive member of the State Bar of California effective three calendar days after the service of this decision and order by mail (Rules Proc. of State Bar, rule 220(c)).

Dated: January 11, 2010.

PAT E. McELROY
Judge of the State Bar Court